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Situation of human rights in Burundi

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the General Assembly the interim report on the human rights situation in Burundi prepared by Marie-Thérèse A. Kéita-Bocoum, Special Rapporteur on the situation of human rights in Burundi, pursuant to Commission on Human Rights resolution 2003/16, endorsed by the Economic and Social Council in its decision 2003/241.

Summary

The Special Rapporteur has the honour to submit to the Third Committee of the General Assembly her seventh report on the human rights situation in Burundi, pursuant to Commission on Human Rights resolution 2003/16. This report follows her seventh mission to Burundi, which took place from 11 to 19 May 2003, several days after the inauguration of President Domitien Ndayizeye. It covers the period from March to August 2003. President Ndayizeye succeeded President Buyoya, who headed the first 18 months of the transition period. Since the return of the Special Rapporteur, Burundi has once again seen a number of very violent clashes in and around Bujumbura between rebel troops — particularly those of the Parti pour la libération du peuple hutu-Forces nationales de libération (PALIPEHUTU-FNL) under Agathon Rwasa — and the regular army. There was also fighting between troops of the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD) under Pierre Nkurunziza and government troops. There were more or less continual clashes between the principal combatants until the end of August, when fighting even broke out among FNL troops.

* This report is being submitted on 20 October 2003, so that it will contain as much updated information as possible.

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I. Introduction

1. During her mission, the Special Rapporteur met top-ranking political leaders, including the new President of the Republic, the new Vice-President of the Republic, the members of the Government — who were mostly reappointed — the President of the Senate and the Second Vice-President of the National Assembly, two former presidents of the Republic and representatives of political parties and forces of all persuasions. She had interviews with representatives of national and international human rights organizations. She travelled to the province of Gitega, where she visited the Batwa community and the prison inmates. She met detainees in the central prison of Mpimba, especially minors and women.

2. The Special Rapporteur wishes to thank all those whom she met for their courtesy, availability and contribution to the success of her mission. She expresses her deep gratitude to the Director of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Burundi and his team, the heads of United Nations agencies, the Special Representative of the Secretary-General for Burundi, the Special Representative of the Secretary-General for the Great Lakes region and the Special Representative of the African Union for Burundi for their goodwill gestures and their contribution to the progress of the mission.

3. The political climate in which the Special Rapporteur's mission took place was relatively calm owing to the grace period granted to the new President of the Republic and his team. Subsequently, and fairly rapidly, the situation deteriorated and an atmosphere of violence once again ensued.

4. In June, the Special Rapporteur was invited to attend the meeting in Caux (Switzerland) between official representatives of the Burundian Government and FNL.

5. Given the close links which the Special Rapporteur again noted during this mission between the political, economic and social situation and the development of human rights, she will begin her report with an outline of the general political situation, placing the usual emphasis on developments in the peace process. She will then analyse the situation of human rights, justice and the strengthening of the rule of law. Lastly, she will present her observations and her recommendations for an improvement in the human rights situation in Burundi.

II. General situation

A. Political situation

6. During her mission, the Special Rapporteur noted that the change of power, on 1 May 2003, and the adoption of several laws provided for in the Arusha Peace and Reconciliation Agreement for Burundi had been well received by the majority of the political community, the labour unions, human rights organizations and representatives of the media. That offered new prospects for an improvement in human rights in Burundi. Furthermore, the base for the formation of the Government has been widened with the appointment of three ministers from the Front de la libération nationale (FROLINA), CNDD-FDD (Jean-Bosco Ndayikengurukiye wing) and FNL (Alain Mugabarabona wing) respectively.

1. Security situation

7. The security situation, which has shown no meaningful improvement since the beginning of the year, remains very disturbing in general. In fact, the agreements signed by the Government with CNDD-FDD (Jean-Bosco Ndayikengurukiye wing) and FNL (Alain Mugabarabona wing) have become a dead letter, as the ceasefire has not been respected and, in nearly the whole of the country, clashes between the army and armed rebel groups have been reported.

8. In April 2003, the capital, Bujumbura, came under heavy bombardment. Observers suggested that CNDD-FDD and FNL might have concluded an alliance resulting in increased fighting. The rebel groups used rocket launchers to bombard the capital and its surroundings. This caused many civilian victims and mass population movements, looting of property and serious destruction of schools and health infrastructure. Rising banditry and juvenile delinquency aggravated the situation. In the eastern part of the country, the inhabitants often spent the night outside their houses for fear of attacks by armed men. Women of all ages and young boys, being particularly vulnerable, often fell victim to sexual violence.

9. Throughout the period under review, the security situation remained disturbing. Numerous arbitrary arrests, kidnappings and murders continued, especially directed against local civilian officials (district and sector heads and commune officials) and various high-ranking political leaders.

10. In June 2003, in the commune of Gisuru, province of Ruyigi, CNDD-FDD rebels abducted 11 members, including 4 parliamentarians,[1] of the Front pour la démocratie au burundi (FRODEBU), the party in power. On 30 June, positions of the African Union forces, responsible for supervising the confinement to camp of the former Burundian rebels in Bubanza province, were attacked by unknown assailants firing automatic weapons; four attackers were killed during the fighting. CNDD-FDD, strongly suspected, denied any responsibility for these attacks.

11. During the night of 6/7 July 2003, FNL troops attacked the areas of Musaga, Kanyosha, Kibenga and Kinindo and the Muzenga district of Bujumbura-Urban. These attacks continued until 9 July. The violent fighting claimed many civilian victims and forced part of the population to take shelter in the town centre. The army lost no time in responding with heavy fire.

12. On 8 July 2003 the rebels fired shells randomly into Bujumbura, leaving many casualties and serious material damage. Some electric pylons were hit, causing a three-day power cut affecting most of the capital. Vehicles of the United Nations Development Programme (UNDP) were also damaged, and some of the inmates of the Mpimba central prison were hit by stray bullets.

13. On 13 July 2003 the town centre was attacked and many child soldiers were trapped and massacred.

14. The FNL attacks were roundly condemned by the international community, particularly the Security Council, which called on FNL immediately and unconditionally to end its offensive and to engage without further delay in serious

[1] These are elected officials of Ruyigi: Léonidas Ntibayazi, President of the parliamentary group of FRODEBU and President of the Human Rights Commission of the National Assembly, Pierre Barusasiyeko, Under-Secretary-General of the National Assembly, Ms. Véronique Nizigama and Fabien Bazirinyakamwe. The latter two were released on 2 July.

negotiations with the Transitional Government. Reaffirming its full support for the Arusha Peace and Reconciliation Agreement for Burundi and the subsequent ceasefire agreements, signed on 7 October and 2 December 2002, the Council again appealed to all parties, particularly CNDD-FDD of Pierre Nkurunziza and FNL of Agathon Rwasa and also the Transitional Government, to undertake in good faith to settle peacefully the questions pending by way of negotiation, and invited them to respect the agreements they had signed[2].

15. At the end of August 2003, FNL and CNDD-FDD rebel troops fought each other. This resulted in many casualties and mass displacement of the civilian population.

2. Developments in the peace process

16. Implementation of the Arusha Agreement has been slowed down by the lack of a ceasefire, jeopardizing the many reforms envisaged, such as communal elections, planned for the 19th month of the transition. However, the Special Rapporteur noted some significant advances. For instance, as previously stated, the transfer of power took place on the appointed date. Mr. Domitien Ndayizeye and Mr. Alphonse Kadege were appointed President and Vice-President of the Republic respectively for the second half (18-month) of the transition period.

17. During her visit the Special Rapporteur was informed of the arrival of the military observers and the first contingent of troops of the African Union peacekeeping force. A second contingent was sent on 1 July 2003, several days after the attack on its Buramata camp site.

18. The same period saw the return to the country of some rebel chiefs or their representatives, while refugees continued to return at a more or less regular rate. Laws envisaged in the Arusha Agreement were passed or were under consideration. Such is the case with the draft law on the suppression of genocide, crimes against humanity and war crimes, the law on provisional immunity from prosecution of politically motivated crimes committed before the signing of the Agreement, and the act on the membership of the Truth and Reconciliation Commission. The National Commission for the Rehabilitation of *Sinistrés* (Survivors) was also installed.

19. For a rather short time, these advances helped attenuate the climate of tension that preceded 30 April, the date of the transfer of power. But attacks by various armed groups around Bujumbura and in the country's interior, followed by reprisals by the national forces, continued to cause suffering to the civilian population.

20. The Arusha Agreement Implementation Monitoring Committee ended its thirteenth session on 23 May 2003 and decided to transmit a memorandum to the President of the Republic without disclosing its contents. It refused the request to include the parties non-signatories to the Agreement in the Implementation Monitoring Committee or the transitional institutions and requested a review of the law governing the National Commission for the Rehabilitation of *Sinistrés* (Survivors).

21. At the end of May, the President of the Republic paid several visits to the interior, including the provinces of Gitega and Ruyigi, which were the scene of

[2] Press release of the President of the Security Council of 10 July 2003.

conflict. He pleaded in favour of the Arusha Agreement, which, in his view, contained all the answers to the questions raised by the people of Burundi.

22. At the beginning of June, representatives of FNL (Agathon Rwasa wing) and the Transitional Government met in Caux (Switzerland) at a round-table conference organized by the non-governmental organization "Initiatives of Change", which was also attended by representatives of the diplomatic corps and the European Union. The Special Rapporteur was invited as an observer. The purpose was not clearly defined; in fact the FNL representatives said they would not talk to the representatives of the Transitional Government, but rather would talk to the Tutsi representatives, on the grounds that FNL had problems not with the Hutus, but with the Tutsis. The meeting did take place, however. While no significant step towards peace or even towards a ceasefire between the two factions was noted, the meeting at least had the merit of enabling them to engage in frank dialogue.

23. A Security Council mission visited Bujumbura from 12 to 14 June 2003 to support the second phase of the transition at a time when the peace process was facing new challenges. The mission decided to focus its efforts on the cessation of hostilities, support for the African Mission in Burundi, mobilization of economic and financial assistance, and the fight against impunity, including the principle of an international judicial commission of inquiry set forth in the Arusha Agreement.

24. On 26 June, about 25 combatants of PALIPEHUTU-FNL (Alain Mugabarabona wing) returned to the African Union's Muyinga-Buramata camp in Bubanza province.

25. Despite efforts deployed in Burundi and elsewhere during the period in question, nothing significant has occurred to realize the hopes raised with the transfer of power or to strengthen or even confirm the commitments undertaken by the belligerents with the signing of the agreements at the end of 2002. On the contrary, the belligerents have not respected any of the agreements signed, and the FNL rebels who refused to sit down at the negotiating table continue to turn a deaf ear to the national and international communities' appeals for peace.

26. Meetings between the rebel leaders and the Transitional Government are planned to be held in the United Republic of Tanzania and South Africa. The success of these negotiations would be a giant step towards peace.

B. Economic and social situation

27. Poverty has increased and spread right across the country. Poverty rates have not changed since the previous report, and a substantial proportion of urban and rural households are living beneath the poverty line, a situation exacerbated by pillaging by armed gangs, members of the regular army and armed bandits, during which women and children are often assaulted and raped.

28. In June, however, following a breathtaking rise in prices during the previous months, prices of basic products appeared to stabilize, but with no effect on purchasing power, which has continued to fall.

29. At the social level, war and a fragile economy have continued to alter the social fabric. The number of children, women and the elderly weakened by an unstable life and the violent conflict has increased, while their protection and care

have not been effectively guaranteed. These still constitute the bulk of victims of human rights violations. What is more, the difficult living conditions of the Burundian people, and the State's financial problems have evidently made it impossible to ensure adequate respect for economic, social and cultural rights, even when the will was there.

III. Human rights situation

30. Unfortunately, none of the efforts made by the various parties have led to peace, so that whatever positive impact they may have had on the human rights situation in Burundi has been very limited or non-existent. During the entire period in question, human rights violations observed during earlier missions were again brought to the Special Rapporteur's attention. Everyone she spoke to deplored the persistence of such violations, even though they did not all proffer the same explanations. Attacks on civil and political rights continue to abound, while the impunity that has surrounded the actions of certain groups, especially members of the regular army and the rebel groups, has continued to fuel the already widespread feeling of insecurity, curtailing the authorities' determination to fight it.

A. Civil and political rights

1. Violations of the right to life

31. The Special Rapporteur noted that, during the period under consideration, there continued to be numerous violations of the right to life. The perpetrators are the belligerents, armed bandits and persons unknown.

32. In recent months, the armed rebel groups' responsibility for such violations has apparently increased. On 17 March, two civilians were allegedly killed by rebels in Butaganzwa commune. The official figures for attacks in July stand at 10 rebels killed and 115 civilians wounded. No figures were given for the number of dead civilians.

33. An OHCHR Burundi office report stated that, according to the authorities, some 100 bodies had been buried in Kanyosha commune, Bujumbura-Rural province. Most were apparently civilians, since they were reportedly buried only after their families had identified the bodies. In the Musaga area, 17 people were reported to have been buried in a common grave and their bodies had later been exhumed and given a more decent burial. According to the OHCHR Burundi office observers, there are other common graves in the Busoro district (Kanyosha area). The reasons for the existence of the graves and the identity of the perpetrators are still unclear. However, the source reports that the common grave in the Musaga area had been dug by FNL rebels, and that at least 10 of the 17 bodies were civilians. The report states that people there were allegedly killed by the FNL rebels and that the grave contained at least three civilian families who had sought refuge in the concession or had lived there.[3]

[3] A family of five (father, mother and children) as well as a couple have reportedly been formally identified. The third family apparently comprises two or three people, making some 10 civilians in all.

34. According to official sources, 28 rebels were killed during the 13 July assault on the town centre. According to the OHCHR Burundi office report, there is agreement among reliable sources that the number might be higher, since many rebels and especially children had apparently been trapped in a ravine and unable to escape. The 19 bodies seen by the OHCHR Burundi office observers included some 10 children aged 9 to 15.

35. That propensity to use children in combat gravely violates international law and is utterly reprehensible. Moreover, to thrust patently inexperienced children in front of enemy weapons is to turn them into "cannon fodder" and offer them up as a sacrifice.[4] No firearm was found near those children's bodies, most of which were clad in rags, with cords attached to their waists. The position in which they were found suggests that they died while trying to escape, probably towards the neighbouring houses. They were doubtless gunned down by regular-army soldiers, without being given a chance to surrender. That is equally reprehensible.

2. Violations of the right to liberty, security and inviolability of the person

36. Violations of these rights still abound. Such violations are attributable to all the belligerents but also to persons unknown, bandits or unidentified persons. The Special Rapporteur was informed of the persistence of torture and arbitrary detention, particularly in military camps and locations inaccessible to OHCHR Burundi office observers.

(a) Violations attributed to agents of the State

37. A report of the United Nations Children's Fund (UNICEF) of March 2003[5] indicates those responsible for reprisals against the civilian population. Thus, during the week of 15-21 March 2003 a battalion commander was found dead on the outskirts of the Muhawazi and Nyaruganda areas. The soldiers are reported to have taken reprisals against the population, systematically looting and burning their homes. The hill settlements of Nyakiyonga, Nykibingo, Rutoke, Ngara, Bwome and Mugongo were also allegedly attacked, looted and destroyed by the soldiers. The people apparently fled towards the Bimpinga commune (Rutana province). On 19 March three women were reportedly raped by soldiers near Muhwazi. While the soldiers were engaging in the reprisals, the road between Kinyiya and Nyarugande had reportedly been barred and closed to traffic, under pain of imprisonment. Using the death of four of their number in an ambush on 24 March as a pretext, the soldiers are said to have kidnapped all the men of military age from the Batye hill settlement (Bubanza province) and to have systematically destroyed and looted all the homes.

38. The soldiers inferred from the fact that the rebels had not looted the cattle of the inhabitants of the Dutwe hill settlement that the latter were accomplices, and are said to have punished them. The soldiers looted the hill settlement of Vumwe on 23 March and that of Rusengo for three successive days from 23 March.

(b) Violations attributed to rebel groups

39. The mass violence which occurred before 15 March caused an outcry among the population. Rebel chiefs reportedly ordered an immediate end to those practices.

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[4] Drugs found on some of those children suggest that they had been drugged.

[5] UNICEF-BURUNDI, *Field Report*, 24-26 March 2003.

However, it is very difficult to obtain information on sexual violence, which may very well continue to take place without anyone's knowledge.

40. The Special Rapporteur was informed of many cases of abduction, including the case mentioned previously of members of FRODEBU by CNDD-FDD rebels, which aroused national and international indignation. The parliamentarians stated that they had gone to their districts to commemorate the tenth anniversary of their party's victory in the presidential and legislative elections of June 1993. The rebel movement ordered the abductions because, according to them, the parliamentarians had no business in their territory. CNDD-FDD allegedly held them so that they would reveal the true reasons for their presence in the province.

41. The rebels are reportedly continuing to impose taxes on the people. In the town of Ruyigi, rates are said to have reached 10,000 Burundian francs for officials of non-governmental organizations, 5,000 francs for members of the civil service and 1,000 francs for farmers. Even certain military staff feel obligated to pay the taxes to prevent their houses from being looted. Six houses were reportedly looted at Ruyigi because the owners had not paid the taxes.

42. There are numerous reported cattle thefts and looting in Ruyigi province, some in broad daylight near the town.

(c) Acts of violence by persons unknown

43. Many exactions against the civilian population have allegedly been perpetrated by unknown persons, particularly rape, which has recently increased.

3. The proliferation of rape

44. Mass rapes, often gang rapes, perpetrated by members of armed groups and soldiers of the regular army, and also by unknown persons or deserters from both types of forces, have recently increased considerably. They have spread in the conflict zones, in the east in particular, as well as in and around Bujumbura. The victims are mainly women without regard for age, but also young boys, a new phenomenon.

45. During her visit, the Special Rapporteur was informed of a situation of particular concern: humanitarian workers had not been able to reach women for six to eight weeks in Ruyigi province, where mass rapes had been committed by the two belligerent parties. She was also informed of the case of the women of Kamenge who were reportedly subjected to sexual violence by unknown persons.

46. During a meeting organized by the OHCHR Burundi office at Bujumbura on 27 March 2003, women who had been victims of sexual violence gave harrowing accounts of what they experienced at Ruyigi. The record of this meeting states that several hill settlements faced a deplorable humanitarian situation because they were regularly visited by groups of armed men. The clashes between the rebels and the army do not spare the people, who are frequently forced to flee and spend the night outside their houses to avoid rape and murder.

47. The participants in this meeting noted a number of things, including the lack of protection provided for women by their husbands (who usually run away from the attackers) and by the authorities, and the trauma suffered by adolescents and young children after witnessing the rape of their mothers (when they are not victims

themselves). In the case of gang rapes, children are often abused in front of other members of the family, in particular the mother and the brothers and sisters. One woman gave an account of being subjected to several acts of sexual violence in succession while holding her baby on her shoulder. Women keep silent about what they have suffered or seen because they fear abandonment by their partners (which is very likely) or social shame. Silence is also a means of protecting themselves and their children against possible reprisals from the aggressors. Rapes, often repeated, can be followed by murder.

48. This violence contributes to the spread of HIV/AIDS and the increase in unwanted pregnancies. It is at the root of enormous psychological damage, especially in young victims, as is often the case in recent times. In many cases, it leads to the disintegration of the family after the departure of the husband or of children who have wearied of quarrelling between the parents. Because the victims fear reprisals, and also because of cultural reticence and lack of confidence in the justice system, responsibility in rape cases is difficult to establish, which makes solving such cases considerably more complicated. Given the level it has reached recently, sexual violence has taken on the character of a war crime and should be treated as such. The perpetrators, particularly belligerents, must learn that this must stop and that in no case will they enjoy impunity.

49. The victims of this violence should receive special care from all sides — the Government, human rights organizations and United Nations agencies. An urgent response to all the issues raised by these crimes must be forthcoming, especially care for the victims, protection of vulnerable groups, and prevention.

4. Violations of freedom of movement and freedom to choose one's residence

50. The Burundi conflict is causing constant mass displacements of the civilian population fleeing combat zones, as well as alternating movements of Burundian refugees departing from or returning to neighbouring countries, mainly the United Republic of Tanzania and the Democratic Republic of the Congo.

(a) Situation of displaced persons

51. The number of displaced persons within the country remains very high, exceeding 380,000 persons spread among 226 sites.[6] The fighting between the rebels since the end of August in several provinces, in particular Bujumbura-Rural and Bubanza, has led to major displacements of the civilian population. The fighting caused true panic among the people; in Bujumbura-Rural, for example, 3,500 people moved towards the capital and within the province seeking shelter.

(b) Situation of returnees and *sinistrés* (survivors)

52. There are over 800,000 Burundian refugees outside the country, most of them in the United Republic of Tanzania, within or outside the camps. Return movements continue, even if the number of persons involved is still not very high. The total figures for voluntary and assisted returns in all provinces of the country were 19,589 people on 19 May, 41,657 on 20 July and 55,574 on 4 September 2003.[7] From the

[6] Office for the Coordination of Humanitarian Affairs, *Briefing Kit and Directory — Burundi 2003*.

[7] Figures provided by UNHCR (Burundi office).

beginning of 2003 up to 17 August, 32,686 Burundians have returned voluntarily, mainly from the United Republic of Tanzania, the Democratic Republic of the Congo, Rwanda and Zambia.

53. Reception of returnees is supported by the Office of the United Nations High Commissioner for Refugees (UNHCR). In addition to the Muyinga and Makamba sites, it opened a third site at Cankuzo at the beginning of June for returnees coming from the United Republic of Tanzania. Another site is planned at Ruyigi.

54. Reception and settlement of returnees are still not easy. *Sinistrés* (survivors of the conflict) have suffered many violations of their rights in the camps and also on the way home. Some of them, especially those who left Burundi after 1972, face land issues, particularly in the south and southwest. Difficulties of all types, but also security issues, force some returnees into exile again. A rapid revision and implementation of the Land Code, as planned, will certainly help to reassure the Burundian people, whether or not they have returned, and will promote national reconciliation.

55. The National Commission for the Rehabilitation of *Sinistrés* (Survivors) has been established, in implementation of the Arusha Agreement, by an act of 13 December 2002 and a decree of 18 February 2003. It is composed of 28 permanent members and divided into subcommissions for the following areas: repatriation and return of refugees; land and other property; management and coordination of humanitarian aid; resettlement of survivors and the socio-communal infrastructure; and administration and finance. The Bureau of the Commission, whom the Special Rapporteur met on her latest visit, plans to elaborate a definitive plan of action in order to offer real assistance to survivors and defend their interests with the State. The Commission lacks the means to fulfil its mission effectively. Furthermore, there is no clear distinction between its role and that of the Ministry for the Rehabilitation and Reintegration of Returnees. This could create jurisdictional conflicts between the two bodies which would be detrimental to the interests of returnees and survivors.

5. Violations of freedom of opinion and expression

56. In these areas, some progress can be noted, but also many failures. Former President Bagaza and the members of his party (Parti pour le redressement national (PARENA)) have been released, and the ban imposed on the party's activities lifted. However, neither President Bagaza nor the members of his party were allowed to leave Burundi but were granted provisional release pending trial. On 16 June 2003, the judicial chamber of the Supreme Court ordered the release of Christophe Hicintuka, the last member of PARENA still in pre-trial detention, charged with attempting to destabilize the institutions of the Republic in 2002. The opening arguments on the substance of the case are scheduled for 26 September 2003. Idelphonse Ndayigimana (see E/CN.4/2003/45, para. 51), was also released.

57. Six members of the group advocating the Framework Agreement for the Restoration of a State of Law, and opposed to the Arusha Agreement, were apprehended on 28 May 2003 and held in Mpimba prison. According to their attorney, they are being held without an arrest warrant. Diomède Rutamucero, president of the Puissance d'autodéfense-Amasekanya, had been in Mpimba prison since 22 May 2003. All these leaders were granted provisional release a few days later.

58. The problems encountered by representatives of the media are many, including difficulties of access to information, censorship and intimidation. In March 2003, the head of State, Pierre Buyoya, prohibited the broadcasting of messages from the armed groups CNDD-FDD and PALIPEHUTU-FNL. This decision followed the decision already taken by the Government in May 2002, but there are no written directives to this effect. The suspension of two radio stations (Isanganiro and Radio publique africaine) in September 2003 is a similar case, as it followed the broadcast of a speech by the FNL spokesman. However, the suspension was lifted after five days because of the outcry it raised in Burundian society.

6. Situation of the Batwa minority

59. The Batwa represent at least 2 per cent of the population of Burundi. There are some 10,000 of them in Gitega. The problems encountered by the Batwa are linked to poverty and exclusion, but they also have cultural roots. War and economic difficulties accentuate the community's backwardness. Their children do not go to school because of a lack of means but also for fear of being rejected by the others. When they do go to school they usually do not complete the first year, since the school is far from where they live and they do not have the means to spend on accommodation or food while being educated. Cultural atavism explains why they have difficulty finding tutors to come to their aid. Today the Batwa manifest an extraordinary degree of backwardness in the school attendance levels of their children, especially girls.

60. The Batwa also do not have access to health care and adequate food. In point of fact, they generally do not possess land, and when they do the land is the least fertile. It also happens that because of inexperience or poverty they sell the land which has been allocated to them. They have hardly any relations with the other communities. Inter-ethnic marriages are so rare that when she visited Gitega the Special Rapporteur was actually informed about the celebration of a marriage between a Batwa man and a Hutu woman.

61. The Batwa often fall foul of the law. They are frequently accused of theft. Large numbers of them do not possess identity cards. They suffer the throes of war as much as the other communities if not more so because of their isolation. However, according to the testimony of some of them, they seem not to enjoy the same degree of assistance from the Burundian authorities or the same international humanitarian assistance. Certainly, action is being taken by non-governmental organizations and United Nations agencies to help them to look after themselves and live alongside the other Burundian communities, but it has not yet had any significant effect.

7. Women's rights

62. The rigours of war, economic difficulties and traditional sluggishness make progress in this area virtually unachievable. However, the status of women is such that it is no longer possible to use war as an explanation for violations of women's rights or as justifying the timidity of a policy to promote their rights. Inertia or indifference in the face of their suffering can no longer be accepted; in fact, that suffering must be the spur for putting into effect compensatory measures.

63. The Special Rapporteur has been informed that the bill on matrimonial dispositions, successions and regimes will be presented to the Council of Ministers

in the third quarter of 2003. But it has to be said that this text has been expected for so long that the fear is that it will prove to be a disappointment. According to people the Special Rapporteur met, particularly members of the Gitega women's associations, the law, even if it is passed, must be explained to everyone, otherwise it might be badly received, even by the women whose rights it is intended to protect.

64. Despite the progress achieved since the beginning of the political transition, women are still underrepresented in the political parties and poorly represented in executive bodies, and their participation in decision-making is still small. The provisions of the Arusha Agreement concerning the appointment of women to decision-making posts (30 per cent) are not respected. Some of the women met pointed out that only 6 of the 28 members of the National Commission for the Rehabilitation of *Sinistrés* (Survivors) are women.

65. Women feel themselves to be wronged by the justice system. The majority of them, particularly in rural areas, do not have the means to seek the advice of a lawyer if they have to deal with the justice system. They claim that this lack of means is also prejudicial to them in the event of a trial because they cannot "pay off the judge".[8] They also claim that they do not have the means to travel to lodge a complaint and they propose that the process at the hill-settlement level be facilitated.

66. Discrimination against women is more evident in rural areas than in the towns. War and disease have increased the number of widows and made their situation more precarious. In the same way as when they have to claim their rights under the law, they find themselves powerless when faced with life's travails, with health problems (especially HIV/AIDS), with schooling for their children or quite simply with the daily task of finding enough food to feed their children.

67. Moreover, women, who are disadvantaged through lack of material means but also because of ignorance of their rights, often have to deal on their own with problems caused by sexual violence suffered either by themselves or by their daughters. In rural areas, the traditional obstacles weigh very heavily on respect for women's rights.

68. In Burundi there are not always prisons for women, apart from the one at Ngozi. Elsewhere they are incarcerated in various buildings or premises separated from those of men, but in all cases they share the same prison environment as men. They engage in no physical activity and prolonged detention makes their social reintegration very difficult.

8. Children's rights

69. Children are one of the groups most affected by the continuing conflict and the growing poverty that results from it. Violations affect children who are the victims of war, street children, child soldiers,[9] minors in prison and children who are AIDS orphans.

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[8] Some of the women the Special Rapporteur met in Gitega suggested that they would lose their cases or find themselves in prison because they did not have the means to secure the assistance of a lawyer or to bend the court verdict.

[9] There are estimated to be several thousand of them in Burundi recruited by all parties to the conflict.

70. The lack of a genuine ceasefire, continuing clashes, economic difficulties and the disintegration of the social fabric explain the fact that no real improvement in the situation of children's rights in Burundi has been recorded in the period concerned. In fact, their fundamental civil, political, economic, social and cultural rights continue to be violated on a regular basis. They are the victims of numerous acts of violence by the regular security forces and by armed rebel groups.

71. During the attack on Bujumbura in July and the repression that followed it, inexperienced children appear to have been used as soldiers, placed in front of weapons without being armed and even executed and murdered in a deliberate and arbitrary manner. Children are said to have been incarcerated and held in secret in military camps, where they were subjected to torture and other cruel treatment. Young people suspected of being collaborators with the military or policemen could not expect to be treated any better when they fell into rebel hands.

72. The demobilization of child soldiers is taking a long time in spite of the agreement signed between UNICEF and the Burundian Government and financed by the World Bank. The Special Rapporteur met detained minors, former policemen, who were incarcerated for theft, rape and/or murder, all of whom stated that they had had weapons in their hands after only a few days of training by regular soldiers.

73. Even if they are relatively few in number compared with other detainees, children in detention (167 out of a total of 8,000 detainees[10]) are particularly exposed to violations of their rights because of the inadequacies of the prison system, deficiencies in the legal system and also their own ignorance of the laws covering them. Thus, they do not escape any of the acts of violence suffered by adult detainees. The number of arbitrary arrests and detentions concerning minors is still as high. A very large number of complaints regarding theft are lodged against minors by some of their employers. The minors are often arrested and can remain in prison without trial for many years. Many minors have been sentenced to very heavy terms of between 10 and 20 years without having had the assistance of a lawyer during their trial. Furthermore, since most of the children come from disadvantaged social groups, few of them are able to afford care when they fall ill.

74. Penal sentences of 15 to 20 years are frequently handed down on minors for offences of varying degrees of seriousness, although the Code of Criminal Procedure prescribes the attenuating circumstance of minority in respect of accused children aged from 13 to 18 years. These children are supposed to serve half the sentence incurred by adults, but in many cases this provision has not been applied. This situation is possibly due to the fact that judges have insufficient, if any, specialization in that field, and it could be corrected by establishing special jurisdictions for minors. The Special Rapporteur met minors in Mpimba prison who had been waiting for several months to see the judge. Children are often arrested without the procedures governing arrest and detention being respected.

[10] Situation as of 28 February 2003 (figure given by the prison administration). Most of these children are in prison for minor offences.

75. Some minors are tortured, while others are kept in detention for several years without being charged or tried, and in inhumane and degrading conditions.[11] Several of them having lost contact with their families, from whom they do not receive visits, have to survive on the daily ration handed out to detainees (350 grams of manioc flour and haricot beans), when they are not robbed of it by the adult detainees. Their youth and promiscuity with the adult detainees expose them to all kinds of violence, and some are even said to have been subjected to sexual abuse.

B. Economic, social and cultural rights

76. The Special Rapporteur has not noted any improvement in the situation of economic, social and cultural rights in the period concerned.

77. In the province of Ruyigi, for example, education is in crisis. The majority of schools are closed and the drop-out rate is very high. The schools are occupied by the military. The number of destitute children attending regularly is very low. Owing to the persistent insecurity, absenteeism is also growing among the teachers, who do not hesitate to take strike action to defend their rights.

78. Access to health care is still limited by the obstacles mentioned in previous reports. In some provinces, especially those in conflict, access to the right to food is just as limited. The education and health systems have been penalized because the financial resources came simply from the provinces themselves.

79. Large numbers of Burundians still cannot enjoy access to care, because of a lack of funds but also because of the increasing insecurity. Furthermore, cases of the virtual seclusion in hospitals of patients who have not been able to meet the costs of the care received are still very widespread and concern the majority of the public hospitals.

80. The prevalence of HIV/AIDS is still high. The numerous cases of violence against women, the precariousness of living conditions and ignorance contribute to the spread of the pandemic. In addition to the difficulties of gaining access to care, persons suffering from AIDS are subjected to discrimination of various kinds at the social and occupational levels. The Burundian Government, through the Ministry responsible for combating HIV/AIDS and the associations for the defence of the rights of persons living with HIV/AIDS, has planned a series of measures to combat this discrimination. A bill on the promotion and protection of persons living with HIV/AIDS is at the discussion stage. The Government has also taken measures to abolish the tax on the medicines, but the number of sufferers receiving anti-retroviral treatment is still too few.

[11] An Amnesty International report entitled "Poverty, isolation and ill-treatment: Juvenile justice in Burundi" (September 2002) gives a good account of the situation of children in conflict with justice. The report also describes the situation of children in the Burundian conflict, displaced and refugee children, child soldiers and the sexual violence of which children in general are victims.

C. Justice and the rule of law

1. Administration of justice and the rule of law

81. With regard to the administration of justice, the Special Rapporteur was informed about the adoption of the law on genocide and the law on the Truth and Reconciliation Committee. Nevertheless, there are still cases of detention in military camps. There are also instances of people being detained beyond the time limits established under the Code of Criminal Procedure. Many remand prisoners are reported to have spent several years in detention, sometimes up to nine years, without sentence. The independent commission on issues relating to prisoners[12] has not managed to reduce the number of prisoners held in detention centres, as was expected, while the Arusha Agreement Implementation Monitoring Committee and the Commission on Human Rights, at its fifty-ninth session, reiterated their appeals for follow-up on the report of the independent commission.

82. Impunity persists, especially with respect to acts of violence committed by elements of the regular armed forces and armed rebel groups. Thus, responsibility for the Itaba incident, in which more than 170 civilians were killed by the regular army, in September 2002, and other similar incidents has not yet been determined.

83. With regard to the Itaba case, soldiers were arrested, tried and sentenced to four months in prison by a military tribunal, and then freed. In response to the Special Rapporteur's questions on that case at the fifty-ninth session of the Commission on Human Rights, the representative of the Burundian Government said that the Office of the Principal State Prosecutor of the Republic had appealed the sentence originally handed down. During her mission to Burundi, the Special Rapporteur found that neither the Principal State Prosecutor of the Republic nor the Chief Military Prosecutor, with sole jurisdiction to lodge appeals, had done so. The judiciary authorities, however, affirmed their willingness to continue the inquiry.

84. Widespread incidents of rape by both parties to the conflict remain unpunished. The people of Rohe, who endured exactions by soldiers stationed near their homes, registered a complaint with the Minister of Defence and the Chief Military Prosecutor. They joined the prosecution as civil plaintiffs against the accused soldiers. This is a new development that shows an awareness of, and willingness to overcome, with the assistance of the justice system, the fear instilled by the soldiers.

85. The observers of the OHCHR Burundi office continued to visit the country's three large prisons. They also visited cells of police stations and the gendarmerie in the capital to monitor whether prisoners were being lawfully detained. Those visits led to the release of several illegally imprisoned persons.

86. The Criminal Chamber of Bujumbura organized an ad hoc hearing for the case of the deadly assault on Dr. Kassi Manlan, former World Health Organization representative in Burundi. That case, which dates back more than a year, was postponed until July 2003 to enable the bereaved family's lawyers to appear in court for the civil proceedings.

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[12] In February 2002, the commission provided for in the Arusha Agreement published its report, following which a national commission was established by the Council of Ministers in June 2002 to implement its recommendations.

2. Places of detention

(a) Prisons

87. On 28 February 2003, the prison population numbered some 8,181, against a holding capacity of 3,750 prisoners. The population included 4,469 remand prisoners, 3,468 convicted prisoners, 167 minors, 168 women and 514 soldiers. Added to this prison population were 42 newborn babies living with their imprisoned mothers. Four hundred forty-three prisoners have been given the death penalty and 651 have been sentenced for life. Between the start of 2002 and April 2003, out of the 2,236 requests for release on parole, 654 were granted.[13] On 15 March 2003, Burundi's prisons held 7,932 prisoners, of whom 4,539 were on remand and 3,393 convicted.

88. Prison overcrowding remains one of the great problems facing the prison administration. To resolve it, the Burundian authorities can apply several solutions, including increasing the (still insufficient) number of releases on parole, accelerating the judicial process and decentralizing jurisdictions (transfer of the cases of the three criminal chambers to the 17 provincial courts). This last measure would mark some progress, but could raise the problem of transporting prisoners if there were no prison in the province in question. The establishment of a master list that would enable the identification of various categories of prisoners and the reasons for the high number of prolonged detentions is also planned.

(b) Other places of detention

89. Most prison cells visited between February and May 2003 were at variance with the Code of Criminal Procedure and showed appalling hygienic conditions.

90. Moreover, access to the military camp of Bujumbura was barred to observers from the OHCHR Burundi office, which was investigating the case of a person who had been detained for illegal possession of a firearm and incarcerated since February after having been held by a gendarmerie brigade. That attitude of the Burundian authorities is regrettable and contradicts the cooperation framework agreement between the Government of Burundi and OHCHR of 8 November 1995. Under the agreement, the OHCHR Burundi office enjoys complete freedom of movement throughout the country, including the freedom to conduct investigations and to access all places of detention.

D. Promotion of human rights

91. The OHCHR Burundi office has increased the number of human rights training sessions. It plans to extend its human rights training and awareness activities to women leaders and to members of the regular armed forces and demobilized rebel forces. The same training will be given to members of the newly reconstituted security forces as well as to returnees and *sinistrés* (survivors). It also intends to contribute to strengthening the pan-African force by providing it with training in human rights and international humanitarian law. A day-long seminar on the role of the media in combating torture was organized for journalists and police representatives to celebrate the United Nations International Day in Support of

[13] Statistics supplied by the Burundian prison administration.

Victims of Torture. OHCHR helped to organize a training workshop on the protection of displaced women. Political authorities and the African community appealed to the Office for support of the peace process. OHCHR is cooperating with the Office of the United Nations High Commissioner for Refugees (UNHCR) to prepare for the return of refugees and to train civil society and the police in refugees' rights. A cooperation agreement was signed between the OHCHR Burundi office and UNHCR.

92. The Government Commission on Human Rights was restructured and now has 16 members. It has resumed its visits in the field with financial assistance from UNDP, which is also funding a study on the role of local human rights committees. The Commission's 2002 report, announced during the visit of the Special Rapporteur, has yet to be published. The Commission complains of insufficient resources, particularly the lack of a permanent staff. Its members say that they are constrained by the absence of budgetary independence and insufficient logistical means.

IV. Observations

93. The absence of a ceasefire and the continued clashes are obstacles to pursuing the peace and national reconciliation process. The delay in deployment of the African peacekeeping force has been inimical to that process. A ceasefire and cessation of hostilities must be quickly established, first of all because the complete implementation of the peace agreements depend on them, and also so that war can no longer be used to justify gross human rights violations. Indeed, it is difficult, in this time of war and insecurity, to envisage the implementation of provisions for an electoral process and therefore think about a post-transition period.

94. Improvement in the human rights situation in Burundi is closely linked to the creation of a climate of stability and lasting peace in the Great Lakes region. The establishment of a Transitional Government in the Democratic Republic of the Congo in June 2003 and the holding of democratic elections in Rwanda are encouraging developments for the future of the region. The positive outcome of the peace process in Burundi opens new prospects for the development of all the countries of the Great Lakes region in particular, and Central Africa in general. The international conference on peace, security and stability in the Great Lakes region advocated by the Security Council and the Secretary-General is an initiative towards that end. It comprises several stages, including a preparatory period that should lead to the holding of the first summit of heads of State and Government in June 2004. Carrying out this process should help to build on the gains made in the area of peace and security and stimulate development of the region and subregion.

95. During her stay, the Special Rapporteur was informed of the continued difficulties in gaining access to *sinistrés* (survivors) and human rights violations, tied not only to the lack of security but also to the obstacles placed by Burundian authorities themselves. The *sinistrés* (survivors) are assisted by the technical group on follow-up, which ensures coordination of humanitarian activities and protection of displaced persons. It enables broad participation of the actors involved with displaced persons, including United Nations specialized agencies, government bodies and humanitarian non-governmental organizations.

96. However, incidents such as those in Kabezi[14] point to the need to establish a structure responsible for the protection of *sinistrés* (survivors). This could involve a thematic group on human rights within the country team, which would effectively contribute to coordinating human rights activities. That group could subsequently be expanded to include non-governmental organizations and the Government Commission on Human Rights.

97. Sexual violence has increased significantly and raised concerns at home and abroad. The magnitude of the crime gives reason to believe that rape is being used as a weapon of war. In its resolution 2003/16 of 17 April 2003, on the human rights situation in Burundi, the Commission on Human Rights highlights the particular nature of acts of sexual violence in that country. However, despite frequent public protests against the rise in such violence, no measure has been taken to end it.

98. The present security situation is exacerbating the increasing seroprevalence rate of HIV/AIDS. It would be good to integrate the HIV/AIDS prevention perspective into human rights awareness and promotion programmes, particularly programmes concerning the billeting of defence and security forces.

99. The problem of determining the age of minors in trouble with the law, already mentioned in earlier reports, still exists. Such detainees have no civil status documents and the age they declare is always different from that mentioned in the criminal file by the officer of the judicial police. Furthermore, the Code of the Individual and the Family establishes 21 as the age of civil majority, whereas articles 12 to 19 of the Code of Criminal Procedure state that the age of majority for criminal purposes is 13 years. In the course of visits to places of detention, the OHCHR Burundi office observers have on several occasions identified detainees under the age of 13. Lastly, none of the 11 prisons in Burundi has accommodation reserved for minor detainees, and overcrowding in detention centres is conducive to the sexual abuse of minors by adult detainees.

100. In order to develop the capacities of the Burundian people with regard to human rights, it would be advisable to consider the establishment of a national human rights commission, even if that seems somewhat premature, given the current situation in Burundi. For the time being, the international community could support the Government Commission on Human Rights so as to enable it to perform its functions.

V. Recommendations

101. **The Special Rapporteur reiterates the recommendations set out in her earlier reports which have not been followed and makes further recommendations to the parties to the conflict, the Burundian authorities and the international community.**

[14] Clashes between the army and the rebels broke out in Kabezi around 21 May in which between 17 to 49 civilians were reported killed.

A. To the parties to the conflict

102. **The Special Rapporteur urges all the belligerents to discontinue all hostilities, lay down their arms and sit down at the negotiating table, for war has never been an effective and durable means of settling disputes among human beings, and is even less effective in the case of disputes between nationals of the same country. She reminds them that the future of Burundi and the survival of its population, especially its young people, call for a negotiated solution as a matter of urgency.**

103. **She appreciates all the efforts made by some belligerents to promote peace but urges them to implement the agreements they have signed and to respect the commitments entered into at the negotiating table.**

104. **The Special Rapporteur urgently appeals to all the belligerents to respect the rights of the civilian population, and especially the right to life, security and inviolability of the person. It is essential that the totally unacceptable sexual violence committed by the belligerents should cease immediately, since it involves war crimes whose perpetrators will sooner or later be held accountable for them.**

105. **The Special Rapporteur exhorts the belligerents to respect international humanitarian law and requests that they refrain from attacking economic and social infrastructures.**

106. **She implores them not to recruit children as soldiers or auxiliaries, and not to involve them in armed conflict in any way. She also urges them to not involve civilians in the armed conflict.**

B. To the Burundian authorities

107. **The Special Rapporteur recommends that the Government should take all appropriate steps to combat impunity effectively and put an end to arbitrary detention and torture. She requests the Burundian authorities to adopt all measures necessary to establish responsibility for grave and massive violations of human rights committed against the civilian population.**

108. **She urges the Government to implement the recommendations of the independent commission on issues relating to prisoners, in particular by making the work of the national commission on this issue more effective and visible.**

109. **The Special Rapporteur recommends that the Burundian authorities put into practice the measures they have taken to stop the recruitment of children into the army and to demobilize those already enrolled.**

110. **She reiterates her recommendation that the Government should demobilize and disarm the militias and other civilian self-defence forces and entrust full responsibility for protection of the public to military and police forces properly constituted using regular recruitment procedures, following a clear chain of command and provisions whereby those committing abuses will be held to account.**

111. The Batwa, given their current situation, should be considered as *sinistrés* (survivors). The Special Rapporteur invites the Government, in accordance with the Arusha Agreement, to take steps to combat the discrimination of which they are the victims.

112. She calls upon the Government to take all necessary steps to protect vulnerable populations and to combat all exactions against children, including minors held in detention.

113. The Special Rapporteur requests the Government to take all necessary steps to put an end to sexual violence, punish the perpetrators and ensure that the victims receive moral, material and psychological support.

114. She invites the Burundian authorities rigorously to respect all conventions on human rights and international humanitarian law to which Burundi is a party.

115. The Special Rapporteur encourages the Burundian authorities to take steps to enhance the efficiency of the Government Commission on Human Rights and to envisage the establishment, within a reasonable time, of a national human rights commission.

C. To the international community

116. The Special Rapporteur thanks the international community, particularly the Regional Initiative States, the Security Council, the African Union and the Secretary-General, for the already substantial efforts it is making to ensure the proper implementation of the peace process. She encourages it to make every effort to persuade CNDD-FDD and PALIPEHUTU-FNL to return to the negotiating table.

117. She encourages the international community to increase its support for the proper implementation of the transition timetable, especially as regards the reform of the army, the quartering of troops and the demobilization and reintegration of combatants, including members of militias and child soldiers. This reform programme should place great emphasis on human rights training.

118. She requests the international community to persuade the belligerents to include a human rights component in the negotiations and in the conclusion of ceasefire agreements between the Government and the armed groups.

119. The Special Rapporteur requests the international community to increase its support for regional mediation and the African Union, in particular as regards the deployment of African peacekeeping forces.

120. She supports the steps taken to prepare for the international conference on peace, security and stability in the Great Lakes region. She also supports continuation of that process and calls upon the international community and regional and subregional organizations to support it, for its success will undeniably have a positive impact on the human rights situation in Burundi and Central Africa.

121. The Special Rapporteur hopes that the international community as a whole will encourage the countries of the subregion to sign bilateral security

agreements among themselves so as to increase the chances of a durable peace and reduce the causes of conflict and massive violations of human rights.

122. **She invites the international community to provide greater assistance to the judicial system and the new institutions established, such as the Truth and Reconciliation Commission and the National Commission for the Rehabilitation of *Sinistrés* (Survivors).**

123. **The Special Rapporteur requests the international community to encourage those involved in humanitarian action to devise projects targeted at the Batwa and to support the action undertaken by the Burundian authorities in that regard.**

124. **She appeals to donors to continue supporting humanitarian and development assistance and to do all they can to fulfil rapidly the commitments they assumed at the Paris and Geneva conferences, especially those concerning the campaign HIV/AIDS, priority development programmes and human rights.**

125. **In order to improve the protection and promotion of human rights, in particular the status of women and the protection of their rights, she requests the international community to encourage the various actors — Governments, United Nations agencies, civil society and non-governmental organizations — to develop a system for coordinating their activities in these fields.**

126. **Since human rights issues lie at the core of the conflict, the Special Rapporteur emphasizes the necessity and urgency of increasing the financial and human resources currently available to the OHCHR Burundi office, so that it can take more action in the field and respond effectively to the many requests it receives relating to the observation, protection and promotion of human rights and human rights training.**